

Notice of Allowability

Application No.

10/692,945

Examiner

Camtu T. Nguyen

Applicant(s)

KADZIAUSKAS ET AL.

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's response filed on July 19, 2004.
2. ☒ The allowed claim(s) is/are 9-14, 19 and 20.
3. ☒ The drawings filed on 24 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Henry Bennett
Supervisory Patent Examiner
Group 3700

DETAILED ACTION

Response to Applicant's Preliminary Amendment

This Office Action is in response to applicant's preliminary amendment filed on July 19, 2004. Claims 1-8, 15-18, 20, and 21 have been cancelled, rendering claims 9-14, 19, and 20 pending.

Allowable Subject Matter

Claims 9-14, 19, and 20 are allowed.

The following is an examiner's statement of reasons for allowance: the art of record when considered alone or in combination neither renders obvious a method for controlling fluid flow to and from a phacoemulsification handpiece, the handpiece including an ultrasonically driven, hollow needle, said method comprising the steps of:

- inserting the needle into an eye for phacoemulsification of eye tissue;
- introducing irrigation fluid into the eye;
- aspirating fluid from the eye through hollow needle;
- determining the initial irrigation fluid pressure;
- adjusting irrigation fluid flow and aspiration fluid flow based on the determined initial irrigation fluid pressure;
- continuously determining irrigation fluid pressure after the initial determination;
- and
- continuously adjusting irrigation fluid flow and aspiration fluid flow based on the continuously determination of irrigation fluid pressure in order to accommodate changes in needle incision size and would stretching during eye surgery.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,013,049 (Rockley et al) discloses in the figure an apparatus and method for removing a natural lens from an eye and is more particularly directed to phacoemulsification comprising elements and steps as recited in applicant's claims but does not appears to teach the steps of determining the initial irrigation fluid pressure.

U.S. Patent No. 5,766,146 (Barwick, Jr.) discloses an apparatus and method for minimizing excess intraocular pressure during a phacoemulsification procedure comprising elements and steps set forth in applicant's claims including the step of determining an initial irrigation fluid pressure (column 4 lines 15-17) but does not appear to teach the steps adjusting both the irrigation fluid flow and the aspiration fluid flow based on the determined initial irrigation fluid pressure.

U.S. Patent No. 5,865,764 (Moorhead) discloses a device and method for noninvasive measurement of internal pressure within body cavities comprising elements and steps as recited in applicant's claims but does not appear to teach the steps adjusting both the irrigation fluid flow and the aspiration fluid flow based on the determined initial irrigation fluid pressure.

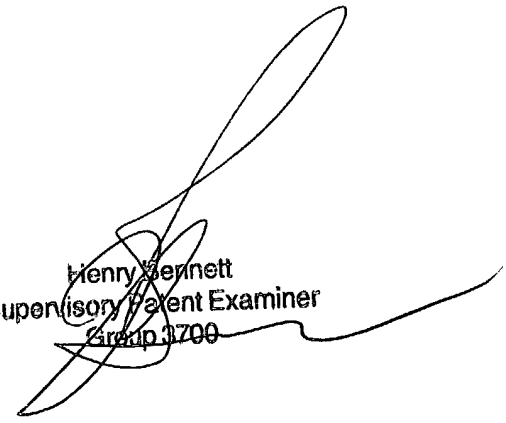
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Camtu Nguyen
August 14, 2004


Henry A. Bennett
Supervisory Patent Examiner
Group 3700